statutes in Massachusetts[14] and Connecticut,[15] but the tendency of legislation and judicial interpretation seems to be in favor of the common law rule which requires conformity with the law of the situs.

S. A.

QUASI-CONTRACTS—WHAT CONSTITUTES UNJUST ENRICHMENT—The term "unjust enrichment" is frequently used by the courts and text writers in stating the basis of liability in quasi-contract actions. Owing, perhaps, to the great variety of the cases grouped under this general head, there is a certain amount of conflict and more or less confusion as to just what is meant by enrichment. Sometimes the word is used in a manner to indicate that an actual increase of the defendant's estate is requisite.[1] Undoubtedly in many cases such an increase is essential to a right of action. For instance, where improvements have been put upon land by a lessee, without the request of the lessor, the recovery, if any, can be only for the enhanced value of the land,[2] as that is the only benefit which the lessor can be said to have received.

Fabian v. *Wasatch Orchard Company*[3] is a case in the Supreme Court of Utah holding that the plaintiff may recover the reasonable value of his services, although the net result of his employment was a loss to the defendant. The Orchard Company hired Fabian to make a market for its canned asparagus. With the consent of the defendant a large quantity was sold, below the cost of production. Fabian, being unable to sue on the contract because it was unenforceable under the statute of frauds, brought a quasi-contract action. The Orchard Company defended that the action could not be maintained as no enrichment was shown, but the court took the view that Fabian should be allowed to recover the reasonable value of his services, and need not show that the Orchard Company had profited.[4]

While this is not a universal view,[5] it is submitted that it is a proper one, and represents the better considered cases. Since the defendant has received the services bargained for, it would be most unjust were the plaintiff denied a recovery of their value. It is true an action upon a constructive or quasi-contract is based upon the theory of restoring a benefit received by the defendant,

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[14] Massachusetts, Gen. Sts., Chap. 92, § 8; Slocomb v. Slocomb, 13 Allen 38 (Mass., 1866).

[15] Conn. Gen. Sts., Chap. 24, § 293; Irwin's App., 33 Conn. 140 (1865).

[1] Keener, "Quasi-Contracts," pp. 278, 279; Gillis v. Cobbe, 177 Mass. 584 (1901).

[2] Greer v. Vaughan, 96 Ark. 524 (1910); Adams v. Kells, 79 Kans. 564 (1909); Union Hall Ass'n v. Morrison, 39 Md. 281 (1873); Wendell v. Moulton, 26 N. H. 41 (1852).

[3] 125 Pac. Rep. 860 (Utah, 1912).

[4] Cozad v. Elam, 115 Mo. App. 136 (1905); Wojahn v. Bark, 144 Wis. 646 (1911); Werre v. N. W. Thresher Co., 131 N. W. Rep. 721 (S. D., 1911).

[5] Gillis v. Cobbe, *supra;* but note a strong dissent.

and that the measure of damage is the value of the benefit to the defendant. But it is not easy to see the force of the argument that the plaintiff should be paid only when the defendant makes a profit. That seems to be deducting the unmarketability of the goods from the value of the services. While the original contract cannot be sued upon, it is, nevertheless, good evidence that the services in question were of value; and it was proper that that value should be restored to the plaintiff.

The principal case is clearly distinguishable from a case where labor and materials are used in constructing a machine, or building a monument, in misreliance upon an unenforceable contract.[6] When the defendant in such a case repudiates the contract, and refuses to take the machine, or the monument he has received nothing that he can restore. So, too, where services are rendered to a third person on the request of the defendant, nothing has been received by the defendant.[7]

Fabian v. *Wasatch Orchard Company* finds support in an analogous line of cases, where, under a contract, which for some reason is not enforceable, improvements are placed on the land of the defendant. In these cases, he has received a benefit in the same sense that a benefit was received in the principal case, and is generally held for the value of the labor and materials, whether or not he has been enriched by an increase in the market value of the property.[8]

J. C. D.

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[6] Dowling v. McKenney, 124 Mass. 478 (1877); Barker v. Henderson, 58 N. J. L. 26 (1895).

[7] Bristol v. Sutton, 115 Mich. 365 (1897).

[8] White v. Wieland, 109 Mass. 291 (1872); Smith v. Smith, 28 N. J. L. 208 (1860). "The plaintiff's right is to recover upon an implied contract to pay for labor and materials used upon his property at his request. . . . . The right does not depend upon the ultimate benefit received by the owner." Vickers v. Ritchie, 202 Mass. 247 (1909), commenting upon Gillis v. Cobbe, *supra*.